



State Water  
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Governor

Agenda Item 5

TO: Rick Soehren  
CALFED Bay-Delta Program  
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FROM: ORIGINAL SIGNED BY  
Jerry Johns  
Assistant Division Chief  
DIVISION OF WATER RIGHTS

DATE: APRIL 15 1997

SUBJECT: COMMENTS ON THE MARCH 3, 1997 DRAFT WATER TRANSFER  
PAPER

Written comments on CALFED's March 3 draft Water Transfer Paper are provided below.

My two major concerns with this paper continue to be those expressed by me at the March PCT meeting when this paper was discussed. These major concerns are:

1. The Water Right Assurances Section on page 7 does not accurately reflect the extensive assurances provided to water right holders under existing statutes.
2. The paper does not suggest a process for resolving the issues that are presented.

Detailed comments are:

1. Page 4 - Essential Elements c. - This section discusses the need for sufficient pumping and conveyance without displacing higher priority water deliveries. If the proposed consolidated point of diversion is approved by the SWRCB as requested by the CVP and SWP, additional capacity will be available to the CVP to move contract water. This could displace the capacity for transfers by other entities using SWP pumping capacity in the future. Does this fact conflict with the purpose of this section?
2. Page 4 - Essential Elements f. - This section discusses the need for parties to be able to accomplish transfers in a timely manner through the regulatory process. This section should be augmented to recognize that the parties must be willing to provide the data necessary to document the details and impacts of the water transfer. Because of changing hydrology, this is sometimes difficult. However, the regulatory process



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works best if the parties can provide the necessary data to allow for the findings of no adverse impacts to fish and wildlife and other users of water as required by existing statutes and the Governor's water policy.

3. Page 5 - Issue b. - Lack of agreement among USBR, DWR and SWRCB on what constitutes transferrable water. As far as I know, these agencies agree on the policy issues around transferrable water (e.g., real vs paper water, and base vs contract water). There are technical issues in defining transferrable water for each transfer. However, there is general agreement on the framework for making these determinations.
4. Page 5 - Issue e. - In the past, the SWRCB has approved transfer requests in a matter of hours or days from the receipt of the request, depending on the urgency and amount of information provided by the permittee. If the necessary information to make the findings required by existing statutes is made available to the SWRCB, the SWRCB's process can move quickly.
5. Page 5 - Issues - A section regarding the issues surrounding instream transfers for fishery purposes under Section 1707 of the Water Code should be added. The issues include tracking these flows through the system and out the Delta (if requested) and to ensure they provide additional protection for fishery purposes.
6. Page 7 - Water Right Assurances - As stated above, I believe existing statutes provide assurances to those water right holders who take advantage of transfer provisions under the Water Code. I know there are perceptions to the contrary. However, we should deal with the perceptions by explaining existing reality and not by continuing to foster these misconceptions. If water users go through the water right transfer process, they get the assurances they need. The existing law is very clear in this regard. Pre-1914 users do not currently have to go through the transfer process. Perhaps they should in order to get the guarantees provided by this legislation.
7. Page 7 - Water Right Assurances (Weaknesses) - You state that a weakness in the water right assurances is getting the water back after a very long transfer. Existing law makes it clear that such rights are reserved regardless of the length of the transfer. The issue you raise is a political, not a legal question. If water is transferred to a urban user for a long



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period of time, it may be politically difficult to retrieve that water by the water right holder, but existing law would allow this. Perhaps you should distinguish between the legal versus political issue.

8. Page 8 - At the top of the page you note that pre-1914 rights would not be on the receiving end of transfers. Why? Pre-1914 users can run out of water like any other user. The City of San Francisco has extensive pre-1914 rights, but they too were looking for transfer water during the drought.
9. Process - As we discussed at both the March and April PCT meetings, there needs to be a CALFED process for bringing closure to the issues set forth in your paper. The SWRCB is willing to work with CALFED in addressing these issues.

Thank you for the opportunity to review and comment on this document.

cc: Michael G. Heaton, Esq.  
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